

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JEDIDIAH AUSTIN SHOEMAKER,

No. C 12-05884 SBA (PR)

Petitioner,

**ORDER GRANTING IN FORMA
PAUPERIS STATUS; DISMISSING
PETITION WITH PREJUDICE;
AND DENYING CERTIFICATE OF
APPEALABILITY**

R. HILL,

Respondent.

9 Petitioner, a state prisoner, filed the instant pro se petition for writ of habeas corpus pursuant
10 to 28 U.S.C. § 2254 challenging his March 25, 2008 conviction and sentence in the Contra Costa
11 County Superior Court. Petitioner filed this action in the United State District Court for the Eastern
12 District of California, which transferred it to this Court in an Order dated September 5, 2012.
13 Petitioner also filed an application for leave to proceed in forma pauperis (IFP).

Based solely on Petitioner's lack of financial resources, his application to proceed IFP is GRANTED. (Dkt. 2.)

Petitioner previously filed a petition for a writ of habeas corpus with this Court, challenging the same conviction, in Case No. C 11-2674 SBA (PR) (2011 Case). On May 12, 2012, the 2011 Case was stayed and administratively closed to allow Petitioner to exhaust state judicial remedies. On September 12, 2012, Petitioner filed a new petition, which was opened as a new action, Case No. C 12-4773 SBA (PR) (2012 Case). The Court issued an Order to show cause why the petition in the 2012 Case should not be granted. Subsequently, the Court discovered that the 2012 Case was opened in error because the new petition should have been filed as the Amended Petition in the 2011 Case. All the documents in the 2012 Case are now to be transferred to the 2011 Case, which the Court directed the Clerk of the Court to re-open. The Court directed the parties to abide by a new briefing schedule for the Amended Petition in the 2011 Case.

The Court has compared the instant petition in this case and the Amended Petition in the 2011 Case, and they appear to contain the same claims. Accordingly, the instant petition is DISMISSED as a duplicate petition to the Amended Petition in the 2011 Case. All Petitioner's

1 claims challenging his March 25, 2008 conviction and sentence in the Contra Costa County Superior
2 Court must be brought and litigated in the 2011 Case.

3 **CONCLUSION**

4 For the foregoing reasons, Petitioner's application to proceed IFP (Dkt. 2) is GRANTED.

5 The petition is DISMISSED WITH PREJUDICE as duplicative.

6 Further, a certificate of appealability (COA) is DENIED. See Rule 11(a) of the Rules
7 Governing Section 2254 Cases. For the reasons stated above, Petitioner has not shown "that jurists
8 of reason would find it debatable whether the district court was correct in its procedural ruling."

9 Slack v. McDaniel, 529 U.S. 473, 484 (2000). Petitioner may not appeal the denial of a COA in this
10 Court but may seek a certificate from the court of appeals under Rule 22 of the Federal Rules of
11 Appellate Procedure. See Rule 11(a) of the Rules Governing Section 2254 Cases.

12 The Clerk shall enter judgment in accordance with this Order, terminate all pending motions,
13 and close the file.

14 IT IS SO ORDERED.

15 DATED: 6/17/13


16 SAUNDRA BROWN ARMSTRONG
United States District Judge

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4

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6 JEDIDIAH AUSTION SHOEMAKER,

Case Number: CV12-05884 SBA

7 Plaintiff,

CERTIFICATE OF SERVICE

8 v.

9 R HILL et al,

10 Defendant.

11

12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court,
Northern District of California.

13 That on June 17, 2013, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies)
14 in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in
15 the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's
office.

16

17 Jedidiah Austion Shoemaker G-16403
18 California State Prison - Solano
19 P.O. Box 4000
Solano, CA 95696-4000

20 Dated: June 17, 2013

21 Richard W. Wiking, Clerk
By: Lisa Clark, Deputy Clerk

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